

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Petition for FCC Agreement in Redefining the Service Areas of)	DA 04-2111
Rural Telephone Companies in the State of Oregon)	

**COMMENTS OF CENTURYTEL OF OREGON, INC.
AND CENTURYTEL OF EASTERN OREGON, INC.**

CenturyTel of Oregon, Inc. and CenturyTel of Eastern Oregon, Inc. (collectively “CenturyTel”) hereby offer the following Comments in response to the Federal Communications Commission’s (“FCC”) Public Notice seeking comment in the above-referenced proceeding.¹

I. INTRODUCTION

On June 24, 2004, the Public Utility Commission of the State of Oregon (“Oregon PUC”) conditionally designated RCC Minnesota, Inc. (“RCC”) and United States Cellular Corporation (“USCC”) as eligible telecommunications carriers (“ETCs”) in rural incumbent local exchange carrier (“ILEC”) study areas for the purpose of receiving high-cost support from the federal universal service program, pending FCC agreement in redefining the study areas of the Oregon rural telephone companies (“Rural ILECs”).² On June 28, 2004, the Oregon PUC

¹ *The Wireline Competition Bureau Seeks Comment on Petition to Redefine Certain Rural Telephone Company Service Areas in the State of Oregon*, Public Notice in CC Docket 96-45, DA 04-2111 (rel. July 12, 2004) (“Public Notice”).

² *In the Matter of RCC Minnesota, Inc. Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, 04-355 UM 1083, 2004 Ore. PUC LEXIS 288 (June 24, 2004) (“RCC Designation Order”); *In the Matter of United States Cellular Corporation Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, 04-356 UM 1084, 2004 Ore. PUC LEXIS 289 (June 24, 2004) (“USCC Designation Order”).

filed a petition at the FCC for consent to redefine certain Rural ILECs' study areas.³ On July 12, 2004, the FCC sought comment on the Petition.⁴

II. THE FCC SHOULD NOT ALLOW CENTURYTEL'S STUDY AREA TO BE CHANGED WITHOUT A WRITTEN FCC DECISION

Section 54.207(c)(3)(ii) of the FCC's rules provides that, if the FCC declines to act on a petition for redefinition of a rural service area within 90 days of the public notice, the petition will automatically be deemed approved by the FCC.⁵ As CenturyTel has argued in prior comments, Section 214(e)(5) of the Communications Act of 1934, as amended (the "Act"), requires the FCC to take into consideration the Federal-State Joint Board's recommendations before changing the study area for a rural ETC. A written decision is physical evidence of whether the FCC actually considered the Joint Board's recommendations. Furthermore, the FCC has an obligation to consider all the arguments made -- both in support of *and* against the Petition. As demonstrated herein, there is considerable debate regarding the merits of the Petition, which the FCC must demonstrate that it has fully considered.

The current controversy surrounding the Joint Board's recent Recommended Decision⁶ and the pressure on the nation's universal service system further demonstrate the need for a written decision in this case. Although the Joint Board endorsed the current processes in place for consideration of requests for service area redefinition, in his strongly worded dissent, Joint Board Member and Commissioner Kevin Martin stated:

³ *Petition for FCC Agreement in Redefining Rural Telephone Company Service Areas*, filed by the Oregon PUC in CC Docket No. 96-45 on June 28, 2004 ("Petition").

⁴ Public Notice.

⁵ 47 C.F.R. § 54.207(c)(3)(ii).

⁶ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) ("*Joint Board Recommended Decision*").

I would have . . . preferred that the Joint Board recommend that the Commission require ETCs to provide service throughout the same geographic service area in order to receive universal service support. This obligation would help guard against the potential for creamskimming. I would have supported a recommendation to deny future requests to redefine the service areas of incumbent rural telephone companies -- *and to deny ETC designations in instances where an ETC's proposed service area does not cover the entire service area of the incumbent service provider.*⁷

CenturyTel could not agree more. The FCC should not allow the Petition to take effect automatically as it sometimes has done in the past⁸ and as the Oregon PUC advocates here. Rather, as has become the FCC's more recent practice,⁹ the FCC should initiate a proceeding here to thoroughly consider the financial and consumer impact of redefining the Rural ILECs' study areas as proposed in the Petition.

III. PERMITTING CETCS TO PICK AND CHOOSE AMONG INDIVIDUAL WIRE CENTERS DISSERVES UNIVERSAL SERVICE PRINCIPLES AND IGNORES SUBSETS OF CUSTOMERS

On May 15, 2002, pursuant to Path 3 of the *RTF Order*,¹⁰ CenturyTel elected to disaggregate support in the state of Oregon.¹¹ CenturyTel's disaggregation plan established two

⁷ *Joint Board Recommended Decision*, Separate Statement of Commissioner Martin, at 2.

⁸ See Application for Review or, Alternatively, Petition for Reconsideration of CenturyTel of Eagle, Inc. filed in CC Docket 96-45 on Dec. 17, 2002.

⁹ *The Wireline Competition Bureau Initiates Proceeding to Consider the Petition Filed by the Colorado Public Utilities Commission to Redefine the Service Area of Delta County Tele-comm, Inc. in the State of Colorado*, Public Notice in CC Docket 96-45, DA 02-3588 (rel. Dec. 24, 2002); *The Wireline Competition Bureau Initiates Proceeding to Consider the Colorado Public Utilities Commission Petition to Redefine the Service Area of Wiggins Telephone Association in the State of Colorado*, Public Notice in CC Docket 96-45, DA 03-2859 (rel. Sept. 9, 2003); *The Wireline Competition Bureau Initiates Proceeding to Consider the ALLTEL Communications, Inc. Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin*, Public Notice, CC Docket No. 96-45, DA 04-565 (rel. Feb. 26, 2004).

¹⁰ *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Multi-Association*

support zones for the entire study area. For disaggregating loop-related support, CenturyTel defined a lower-cost zone for those wire centers where costs are relatively lower, thereby requiring relatively less loop-related support, while the remaining support assigned to the study area would be distributed among the remaining wire centers in the higher cost zone.

While the Oregon PUC correctly states that disaggregation pursuant to Path 3 can help reduce the likelihood that a competitive ETC (“CETC”) will receive support that is not justified on an economic basis,¹² disaggregation does not fully solve this problem. The disaggregation process is an imperfect exercise, regardless of the state, study area, or company at issue. Even within one of the CenturyTel zones, not all lines have the same cost characteristics. Although CenturyTel was able to calculate relative cost down to the exchange, which in the case of Oregon is the wire center, support was established based on two support zones – not 55. The two zones comprise areas with relatively similar cost characteristics although costs still are averaged within each zone. Grant of the Petition would allow a carrier that does not have to serve an entire zone to target only the most profitable wire centers within the zone and receive high-cost support even though the CETC’s average costs for those individual wire centers may be lower than the ILEC’s costs for the entire zone. As a result, permitting CETCs to pick and choose among individual wire centers disserves the public interest and denies competitive choice to all customers in the wire centers.

Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Report and Order, 16 FCC Rcd 11244 (2001) (“RTF Order”).

¹¹ *Id.* at 11303 ¶ 148.

¹² Petition at 12.

IV. THE FCC SHOULD REJECT THE OREGON PUC'S PETITION TO REDEFINE CENTURYTEL'S STUDY AREAS

CenturyTel disagrees with the Oregon PUC's claim that redefining the Rural ILECs' study areas will not result in cream-skimming. As the FCC acknowledged in the *Virginia Cellular Order*,¹³ "rural cream-skimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area."¹⁴ The FCC also stated that it would evaluate the population density of each affected wire center to determine whether the proposed designation raised rural cream-skimming concerns.¹⁵ The Petition, however, does not provide population density data by wire center but only comparative average cost per line data. Population density data would serve as an additional cross-reference for the FCC in determining whether cream-skimming opportunities exist and would allow the FCC to evaluate the reliability of the average-cost-per-line data presented in the Petition. The FCC should require the Oregon PUC to supplement its application with population density data.

V. RCC AND USCC SHOULD BE REQUIRED TO SERVE THE ENTIRE TERRITORY OF THE RURAL ILECS THROUGH A COMBINATION OF FACILITIES AND RESALE

In the RCC and USCC designation proceedings, the Oregon PUC conditionally granted RCC's and USCC's requests to be designated as ETCs for parts of the territory of a rural

¹³ *Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 ("Virginia Cellular Order") at ¶¶ 32-35.

¹⁴ *Id.* at ¶ 32.

¹⁵ The Oregon PUC maintains that population density considerations do not apply to service area redefinition. This statement is simply not true. As a part of the FCC's redefinition analysis in the *Virginia Cellular Order*, the FCC took into account the effects of creamskimming by examining, among other things, the population densities of the wire centers Virginia Cellular could and could not serve. *Virginia Cellular Order* at ¶ 42. The Oregon PUC fails to acknowledge the relevance of the *Virginia Cellular Order* to this proceeding in this regard.

telephone company, but did not require the CMRS carriers to serve the study areas of the Rural ILECs in their entirety. The Act and the FCC's rules require ETCs to serve the ILEC's entire study area either using their own facilities or a combination of their own facilities and resale of another carrier's services,¹⁶ unless the state and the FCC affirmatively find it would serve the public interest to forego this requirement. The Oregon PUC summarily dispatches this obligation without any meaningful analysis.

The Petition does not assert that either RCC or USCC is a new service provider in CenturyTel's study area. Nor does the Petition require RCC or USCC to provide service throughout CenturyTel's study area, thereby truly bringing competitive choice to *all* customers not now served by RCC or USCC. The lack of facilities does not preclude competitive ETCs from serving the ILEC's entire study area. RCC and USCC can and should be required to expand their coverage to serve the Rural ILECs' entire study areas through some combination of their own facilities and resale of another carrier's services, as required by Section 214(e) of the Act. The Petition will not bring rural consumers the increased competitive choice that the Oregon PUC anticipates it will, and could have the effect of diminishing rural ILEC investment, a fact the Oregon PUC wrongly dismissed without adequate consideration.

VI. THE FCC MUST RESOLVE THE ISSUES RAISED IN THE CETC PROCEEDING BEFORE REDEFINING SERVICE AREAS

CenturyTel believes that redefining the Rural ILECs' study areas in the manner proposed by the Oregon PUC is premature. The Commission has before it a comprehensive proceeding in which it is considering the *Joint Board Recommended Decision*, and has sought comment on the process for consideration of requests for service area redefinitions. The FCC

¹⁶ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.201(d)(1).

also has before it a number of specific requests to modify rural service areas for competitive ETCs that do not desire to serve the entire study area of the rural LEC on whose federal universal support they desire to draw.¹⁷

FCC precedent demonstrates that service area redefinitions have broad applications and lower the bar for *all* subsequent competitive ETC designations in the rural carrier's service area with no perceptible benefit for rural customers who live in those service areas.¹⁸ This outcome, however, is contrary to Section 214(e) of the Act, which requires that each rural ETC designation must be reviewed and granted only if determined to be in the public interest. Comments on the Joint Board's Recommended Decision will likely flesh out the benefits and burdens to the public of supporting ETCs that do not serve the same area as the ILEC.

CenturyTel urges the FCC to reject the Oregon PUC's request that the FCC grant the Petition expeditiously and allow the proposed redefinition to become effective without further action.¹⁹ Rather, the FCC should postpone decision in this case so it may benefit from industry comment on the recommendations of the Joint Board in the pending rulemaking

¹⁷ *Pleading Cycle Established for Comments Regarding Applications for Review of Orders Designating Eligible Telecommunications Carriers in the State of Alabama*, FCC Public Notice in CC Docket 96-45 (rel. Jan. 10, 2003); *Pleading Cycle Established for Comments on Proceeding Regarding the Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, FCC Public Notice in CC Docket 96-45, DA 03-26 (rel. Jan. 7, 2003).

¹⁸ *Cellular South Alabama ETC Order* at ¶ 2 (holding that the CETC applicant's request to redefine CenturyTel's service area to the wire center level was "moot," because the Commission has "recently agreed to a redefinition of the service areas of these rural telephone companies").

¹⁹ Petition at iii.

proceeding.²⁰ Deferring a decision for the brief period until the FCC issues an order based on the Joint Board's recommendations and industry comment will not harm RCC or USCC as they both are currently providing service in CenturyTel's study area based on business models that are working. At the very least the FCC should initiate a proceeding here just as it has done recently in other proceedings seeking to redefine service areas.

VII. THE FCC MAY IMPOSE NEW REQUIREMENTS WITH WHICH CETCS MUST COMPLY AT ANY TIME THROUGH A RULEMAKING OR ADJUDICATORY PROCEEDING

The FCC clearly stated in the *Highland Cellular Order* that the framework adopted therein "shall apply to all ETC designations for rural areas pending further action by the Commission."²¹ As described below, the FCC may impose new designation requirements on a CETC at any time -- even after the FCC initially designated the carrier as a CETC. In the *Highland Cellular Order*, for example, the FCC made clear that, while Highland Cellular's ETC designation was effective immediately, "the outcome of the [FCC's] pending proceeding, now before the Joint Board, examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Highland Cellular and other ETCs may receive in the future."²² As a result, the FCC warned Highland Cellular and other ETCs that the rules could change prospectively. The risk that the FCC will change its designation rules -- or any other rules -- always exists. To the extent that the Oregon PUC is concerned about RCC's

²⁰ Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (rel. Feb. 7, 2003) ("CETC Proceeding").

²¹ *Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 04-37 ("Highland Cellular Order") at ¶ 4.

²² *Highland Cellular Order* at ¶ 12.

and USCC's long-term ability to provide supported services because support is insufficient or the rules are too strenuous, nothing prevents RCC and USCC from relinquishing their ETC designations and corresponding benefits and obligations.²³ CETC status is not an entitlement. In order to reap the benefits of CETC status (a business decision CETCs voluntarily make), they must fulfill the regulatory obligations associated with those benefits.

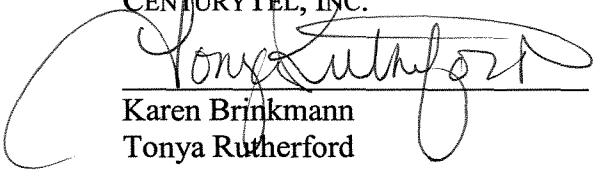
VIII. CONCLUSION

CenturyTel opposes the Petition to redefine CenturyTel's study area at the wire center level. The FCC should not permit carriers like RCC and USCC to pick and choose among individual wire centers. Rather, they should be required to serve the Rural ILECs' entire territory through a combination of their own facilities and resale of another carrier's services. CenturyTel urges the FCC to delay the redefinition of the Rural ILECs' study areas until the FCC resolves the issues raised in the CETC proceeding. In any event, the FCC should not allow CenturyTel's study area to be changed without a written FCC decision.

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Respectfully submitted,
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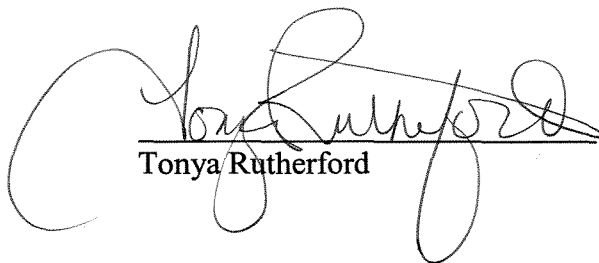
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²³ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments was sent by 1st Class US mail, this 26th day of July 2004, to:

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